

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

BERNADINE D. SOILEAU, INDIVIDUALLY * CIVIL ACTION NO. 6:19-cv-00537
AND IN HER CAPACITY AS EXECUTRIX *OF THE ESTATE OF JOHN L. SOILEAU, SR. **

VERSUS

MIDSOUTH BANCORP, INC. * MAGISTRATE PATRICK J. HANNA

**BERNADINE D. SOILEAU'S FIFTH SUPPLEMENTAL
AND AMENDED COMPLAINT**

NOW INTO COURT, through undersigned counsel, comes Bernadine D. Soileau (“Bernadine”), individually and in her capacity as executrix of the estate of her deceased husband, John L. Soileau, Sr. (“John”), who respectfully amends and supplements her complaint, previously asserted in her “Fourth Amended and Restated Complaint” (Rec. Doc. 24), as follows:

I.

Paragraph 2 of Bernadine’s Fourth Amended and Restated Complaint is replaced with the following:

“2. Made defendants herein are:

- a) **MidSouth Bank, National Association**, a Louisiana bank, whose registered office is located in Lafayette Parish (“MidSouth”); and
- b) **Zurich American Insurance Company** (Policy No. DOP 0172950-01) (“Zurich”), a foreign insurer doing business in the State of Louisiana which provided a policy of liability insurance and/or excess coverage insuring MidSouth for the claims asserted herein and is liable *in solido* with MidSouth and which may be served through its registered agent for service of process in the State of Louisiana: Louisiana Secretary of State, 8585 Archives Ave., Baton Rouge, LA 70809.”

II.

Paragraph 33 of Bernadine's Fourth Amended and Restated Complaint is replaced with the following:

"33A. MidSouth violated the rights of Bernadine and John under the Electronic Funds Transfer Act ("EFTA"):

- i. by allowing the transfer of funds, from December 2016 through August 2017, from Bernadine and John's checking account without their knowledge, consent, or prior authorization, causing damage to them;
- ii. by not making a good faith investigation of Bernadine and John's allegations of unauthorized electronic fund transfers (errors) in their account;
- iii. by not provisionally recrediting Bernadine and John's account within ten (10) business days of their allegations of unauthorized transfers;
- iv. because it did not have a reasonable basis for believing Bernadine and John's account was not in error;
- v. because it knowingly and willfully concluded that Bernadine and John's account was not in error when such conclusion could not reasonably have been drawn from the evidence available to it at the time;
- vi. because it never reimbursed Bernadine and John for the unauthorized electronic fund transfers (errors).

33B. MidSouth's failure to comply with provisions of the EFTA subjects MidSouth to liability under the EFTA for the following:

- i. the unauthorized electronic fund transfers (actual damages) from Bernadine and John's account;

ii. statutory damages;

iii. treble damages;¹

iv. costs of this action, together with reasonable attorneys' fees as determined by the court."

III.

Paragraph 62 of Bernadine's Fourth Amended and Restated Complaint is replaced with the following:

"62. Each of the foregoing claims and other facts pleaded herein have resulted in the following damages:

- a. loss of misappropriated or converted assets and funds;
- b. treble damages;
- c. investigation costs;
- d. mental anguish;
- e. emotional distress;
- f. inconvenience;
- g. costs of this action;
- h. attorneys' fees;
- i. all other damages pled herein; and
- j. such other damages, losses, and injuries of such nature and such amounts as may be proven at trial."

¹ 15 U.S.C. § 1693f(e); 15 U.S.C. § 1693m(a)(1).

IV.

The “Prayer for Relief” in Bernadine’s Fourth Amended and Restated Complaint is replaced with the following:

“WHEREFORE, Petitioner, Bernadine D. Soileau, individually and in her capacity as the executrix of the estate of John L. Soileau, Sr., prays that after due proceedings had, there be judgment in favor of Petitioner and the estate of John L. Soileau, Sr., and against MidSouth and Zurich for the following:

- a. loss of funds improperly transferred or converted;
- b. treble damages;
- c. investigation costs;
- d. mental anguish;
- e. emotional distress;
- f. inconvenience;
- g. costs of this action;
- h. attorneys’ fees allowed by law;
- i. all other damages and losses pleaded herein;
- j. interest from the improper transfer and taking of Petitioner’s funds; and
- k. such other damages, losses, and injuries of such nature and such amounts as may be proven at trial.”

V.

Except as replaced herein, Bernadine adopts by reference, as if fully copied and set forth herein, all allegations and prayers for relief as previously alleged in her Fourth Amended and

Restated Complaint, including but not limited to, paragraphs 1 through 62 of her Fourth Amended and Restated Complaint.

WHEREFORE, Petitioner, Bernadine D. Soileau, individually and in her capacity as the executrix of the estate of John L. Soileau, Sr., prays that after due proceedings are had, that there be judgment in favor of Bernadine D. Soileau on all of her claims and requests for relief herein and in her Fourth Amended and Restated Complaint, and any other relief she may be entitled to under the law.

Respectfully submitted:

PERRET DOISE L.L.C.

s/Henry C. Perret, Jr.
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SOILEAU, INDIVUDUALLY AND IN HER
CAPACITY AS EXECUTRIX OF THE
ESTATE OF JOHN L. SOILEAU, SR.**

CERTIFICATE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on all counsel of record, on November 20, 2020, who are deemed to have consented to electronic service via the Court's CM/ECF system.

I also certify that I have mailed by United States Postal Service this filing to the following non-CM/ECF participants: N/A

s/Henry C. Perret, Jr.
HENRY C. PERRET, JR.